

Notice of Allowability

Application No.

10/637,600

Applicant(s)

BUCHHOLZ ET AL.

Examiner

Art Unit

C. SAYALA

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 9/27/2007.
2. ☒ The allowed claim(s) is/are 1-4 and 6-11.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


CHHAYA D. SAYALA
PRIMARY EXAMINER

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Page 7 of applicant's remarks state:

Although the Winterhalter et al and Leinfelder et al patents effectively teach that cysteine and cystine are known amino acids, no motivation is found in either of these references to form a feed supplement based on these two specific microorganisms by the fermentation of a specific microorganism, i.e., *E. coli*, which produces the amino acids. Thus, the combined references do not motivate one of skill in the art to prepare the claimed cysteine/cystine based feed supplement of the present invention.

The Binder et al patents '933 and '710 disclose animal feed supplements that are fermentation broths and therefore mixtures of one or more amino acids with sugars, proteins, microorganisms and the like. In both references, the animal feed supplements preferable contain only one amino acid, in particular the amino acids lysine, threonine, tryptophan, leucine, isoleucine, valine, proline, arginine and alanine. Cysteine compounds are not shown or suggested as amino acid components of the supplements disclosed in the patents. In fact, the '933 patent specifically describes in column 4, lines 54-58 that aside from the several amino acids disclosed in the patents, other amino acids should not be present in the feed supplements that are undetermined or not suitable for the feed supplements. This disclosure clearly excludes cysteine/cystine compounds from the disclosed animal feed supplement compositions, and consequently, the Binder et al patents do not overcome or improve upon the deficiencies of Winterhalter et al and Leinfelder et al.

Based on such and since it is agreed with that Binder et al. teach against any other amino acid in the broth, while the primary references do not suggest an animal feed containing fermentation broth and the amino acids shown, the claims are found allowable over prior art of record as applied.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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